



IT IS HEREBY ADJUDGED and DECREED that the below described is SO ORDERED.

Dated: October 02, 2004

**ROBERT E. NUGENT
UNITED STATES BANKRUPTCY JUDGE**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

IN RE:

LORETTA LYNN VAN DYKE,

Debtor.

**Case No. 03-10273
Chapter 7**

J. MICHAEL MORRIS, Trustee,

Plaintiff,

v.

Adversary No. 03-5278

**LORETTA LYNN VAN DYKE and,
WILLIAM L. TOWNSLEY, III,
Guardian Ad Litem for Austin Lee Frost,**

Defendants.

MEMORANDUM OPINION

This adversary proceeding came on for trial on September 22, 2004.¹ After hearing the evidence and the arguments of counsel, the Court took the matter under advisement. In addition to the testimony at trial, the Court has reviewed and considered the exhibits admitted into evidence by stipulation of the parties as well as the summary judgment papers previously submitted, and is now prepared to issue its decision.

A. NATURE OF CASE

This adversary proceeding involves a dispute over \$7,000 from a “friendly settlement” of a pre-petition personal injury lawsuit arising from injuries sustained by debtor’s minor son in a single car accident in which the debtor Loretta VanDyke was the driver.² The chapter 7 trustee contends the \$7,000 is property of the bankruptcy estate. He originally brought this adversary proceeding against the debtor and the guardian ad litem for debtor’s son, William L. Townsley III, seeking turnover of the funds from the guardian ad litem and revocation of the debtor’s discharge.³ The trustee later added a count for fraudulent transfer under 11 U.S.C. § 548(a)(1)(A) or (B).⁴

B. JURISDICTION

This is a core proceeding under 28 U.S.C. § 157(b)(2)(E) and (H). The Court has jurisdiction pursuant to 28 U.S.C. § 157(a) and (b)(1) and 28 U.S.C. § 1334.

¹ J. Michael Morris appeared as chapter 7 trustee. Thomas Lasater appeared on behalf of the guardian ad litem, William Townsley, who also appeared in person. The debtor Loretta VanDyke appeared in person. There were no other appearances.

² See *Betz v. Farm Bureau Mut. Ins. Agency of Kansas, Inc.*, 269 Kan. 554, 8 P.3d 756 (2000) and *Perry v. Umberger*, 145 Kan. 367, 65 P.2d 280 (1937) for a general discussion of friendly lawsuits and settlements under Kansas law.

³ The trustee later abandoned the revocation claim. See Final Pretrial Conference Order, Dkt. 50.

⁴ All subsequent statutory references are to the Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, unless otherwise noted.

C. FINDINGS OF FACT

On September 21, 2001, the debtor Loretta VanDyke (f/k/a Loretta Long)⁵ was driving her car with her 2-year old son Austin Frost in the back seat, when he freed himself from the child restraint and fell from the moving vehicle. Austin sustained bruises and abrasions and was transported to the emergency room. He was released from the hospital a couple of days later after undergoing a battery of tests and it was determined that he had no other injuries. Medical expenses totaling \$11,173.63 were incurred for Austin's care and treatment resulting from the accident.

Debtor's automobile liability insurer Shelter Insurance paid personal injury protection (PIP) benefits of \$4,500 under debtor's policy, leaving unpaid medical expenses of \$6,673.63. Shelter contacted the debtor and negotiated a settlement with her for \$21,500 concerning the accident. The settlement sum was apportioned as follows: \$4,500 for repayment of PIP benefits paid by Shelter; \$10,000 to purchase an annuity contract for Austin;⁶ and \$7,000 to pay the unpaid medicals and debtor's lost wages.⁷

In March of 2002, Shelter referred the claim and settlement to Stephen Kerwick of the Foulston Siefkin law firm. Mr. Kerwick was directed to implement and obtain court approval of the settlement. On March 25, 2002 Mr. Kerwick filed a friendly lawsuit in the District Court of Sedgwick County, Kansas.⁸ The petition was brought by Loretta Long, as parent, natural guardian and next friend of Austin Lee Frost, a minor, against Loretta Long, individually, as the driver of the car. The lawsuit

⁵ At the time of the accident the debtor was known as Loretta Long. Subsequent thereto, she married and took the name of Loretta VanDyke.

⁶ The annuity contract would pay the lump sum of \$22,385.61 to Austin when he reached the age of 25.

⁷ After payment of \$6,673.63 of medical bills, approximately \$327 remained from the available \$7,000 for the debtor's lost wages.

⁸ Case No. 02 C 1041.

alleged that debtor was negligent in failing to maintain a secure restraint of Austin and sought damages. Ms. Long alleged no claim on her own behalf, as she was not injured in the incident. Mr. Kerwick also prepared a settlement and release agreement for execution at the settlement hearing that incorporated the terms of the negotiated settlement between Shelter and Ms. Long.

The parties appeared for a friendly settlement hearing in March, 2002, before Sedgwick County District Judge Richard Ballinger. Judge Ballinger refused to go forward with the settlement hearing after it became apparent that Ms. Long did not clearly understand the nature of the proceedings. Judge Ballinger appointed attorney William Townsley as guardian ad litem for Austin and directed Mr. Townsley to investigate the matter and determine whether the proposed settlement was fair and reasonable.

Thereafter, Mr. Townsley reviewed the medical records and consulted with the treating physician regarding Austin's injuries. He satisfied himself that there were no residual injuries and that the proposed settlement was fair to Austin and reasonable.⁹ Mr. Townsley did not renegotiate the settlement.¹⁰

The matter was set for a second settlement hearing on September 23, 2002. At this hearing, Judge Ballinger noted that prior to going on the record, the debtor consulted with an attorney about a potential bankruptcy.¹¹ Judge Ballinger expressed his concern that as the settlement was structured,

⁹ Mr. Kerwick noted at trial that debtor's policy limits were \$25,000.

¹⁰ Both Mr. Townsley and Mr. Kerwick testified that due to a change in interest rates, the cost of the annuity had increased from about \$8,500 to \$10,000 since the original settlement had been negotiated between Shelter and debtor, but that Shelter agreed to cover this additional cost.

¹¹ At trial, the debtor denied that she was contemplating bankruptcy at the time of the settlement hearing. She claimed that she considered bankruptcy later when her divorce was creating debt problems. The debtor's bankruptcy attorney did not appear at trial. Mr. Kerwick testified that he first learned of debtor's potential bankruptcy at the settlement hearing. This Court gives credence to Mr. Kerwick's testimony and Judge Ballinger's remarks on the record at the settlement hearing and discounts the debtor's testimony.

some of the \$7,000 payment was earmarked for Ms. Long's loss of wages. He made it clear to both the guardian ad litem and to Mr. Kerwick that he did not want it done this way, and further, that no part of the settlement funds was to be used for Ms. Long's bankruptcy filing fee or attorney fees. As Mr. Kerwick described it, Judge Ballinger "laid down the law" to everyone at the hearing that no money would go to the debtor for her individual use. Judge Ballinger insisted that all of the \$7,000 be paid for Austin's benefit. He directed Mr. Townsley to negotiate a reduction in the \$6,673 of outstanding medical bills with the medical providers in the hope of getting more money for Austin. After paying the medical providers, any difference from the \$7,000 was to go to Austin as a reserve for his care.

Judge Ballinger then approved the settlement:

THE COURT: Okay, great. I am going to find the Court has jurisdiction based on the type of accident, the incident; the damages, the amount is fair, just, and equitable; *that the amount of money paid to the mother directly with the condition that it is for Austin's direct benefit and not hers is necessary*,¹²

At the settlement hearing, the debtor acknowledged that no part of the \$7,000 payment was for her use.¹³

Q. Okay. On the \$7,000 portion, you understand that that's not paid for your use, that whether you apply it to past medical bills or as a reserve for Austin's care, that that money is for his use?

A. Right, I understand.¹⁴

At the end of the settlement hearing on September 23, the journal entry of judgment and settlement and release agreement were executed by Ms. Long in her capacity as Austin's next friend

¹² Defendant's Ex. C, Tr. at p. 14 (Emphasis added).

¹³ The debtor reiterated her understanding at trial that none of the \$7,000 was hers.

¹⁴ Defendant's Ex. C, Tr. at p. 11.

and by the guardian ad litem, Mr. Townsley.¹⁵ The \$7,000 check was delivered to Ms. Long and she immediately endorsed the check over to Mr. Townsley, who has held the funds in his trust account ever since.

According to Mr. Kerwick, debtor's automobile liability policy was a "standard" Shelter Insurance Company policy.¹⁶ Mr. Kerwick believed that Ms. Long had insurance coverage under Part I, Coverage A (bodily injury) and Coverage B (property damage), but not Part II, Coverage C (medical benefits). Based on Mr. Kerwick's recollection, he believed that Ms. Long had the minimum liability coverage of \$25,000 for bodily injury and \$4,500 for PIP benefits required under Kansas law¹⁷ and that the settlement funds were paid under Part I. The policy admitted into evidence, however, does not contain a declarations page, and therefore, Mr. Kerwick could not definitively state what coverages Ms. Long had.¹⁸

In the months following the settlement, Mr. Townsley contacted Wesley Hospital to negotiate a reduction in the hospital charges, the largest portion of the unpaid medical bills. He had reached a tentative oral agreement with Wesley for a 50% reduction in the hospital bill and was awaiting final

¹⁵ Neither the journal entry nor the settlement agreement that had been drafted in advance and brought to the settlement hearing by Mr. Kerwick were modified to reflect the change concerning the \$7,000 payment that had been ordered by Judge Ballinger.

¹⁶ See Plaintiff's Ex. 9.

¹⁷ \$25,000 is the minimum liability amount for bodily injuries required under Kansas' Automobile Injury Reparations Act. See KAN. STAT. ANN. § 40-3107(e) (2000). Likewise, all automobile liability insurance policies must include PIP benefits. KAN. STAT. ANN. § 40-3107(f) (2000). PIP benefits include medical benefits up to a minimum of \$4,500. See KAN. STAT. ANN. § 40-3103(q) and (k) (2000). Debtor had the mandated PIP coverage. See Plaintiff's Ex. 9, pp. 14-18 for the PIP coverage endorsement.

¹⁸ The index to debtor's automobile liability policy clearly contemplates the existence of a Declarations page that would show the policy period, coverages and amount of insurance that debtor had. See Plaintiff's Ex. 9, p.1.

approval from Wesley when, on January 22, 2003, the debtor filed her chapter 7 bankruptcy.¹⁹ All communications with the medical providers ceased after debtor filed bankruptcy.

J. Michael Morris was appointed the chapter 7 trustee in debtor's bankruptcy case. The debtor did not list any of the unpaid medical bills from Austin's accident on her schedules. Nor did she list the friendly lawsuit or the insurance monies that had been paid in settlement of the claim. Debtor did testify at trial that she informed her bankruptcy attorney of the lawsuit and that insurance money was available to pay Austin's medical bills. She further testified that none of the medical providers had contacted her in an effort to collect Austin's medical bills.

Debtor received her discharge on May 30, 2003. In June, 2003, the guardian ad litem wrote to Mr. Morris and requested the trustee's consent to disburse \$500 of the settlement funds to debtor. Mr. Townsley's action was prompted by a request from the debtor to purchase clothes for Austin. After several exchanges between Mr. Townsley and Mr. Morris and a review of the friendly settlement documents, Mr. Morris laid claim to the \$7,000 being held by Mr. Townsley, contending that the funds were property of the bankruptcy estate under the terms of the journal entry of judgment and settlement and release agreement.

In September 2003, the guardian ad litem moved to clarify the state court journal entry and approve an order nunc pro tunc. Hearing was held on the motion on September 10, 2003. Although given notice of the motion and the hearing, the trustee did not appear at the hearing. Judge Ballinger entered a nunc pro tunc journal entry wherein he deleted the reference that Ms. Long was to receive any reimbursement for lost wages.

The trustee moved to withdraw his no asset report and to reopen debtor's bankruptcy case. On

¹⁹ *In re Loretta Lynn VanDyke, f/k/a Loretta Long*, Case No. 03-10273.

September 9, 2003, the trustee filed an adversary complaint for turnover of the \$7,000 and to revoke debtor's discharge. The guardian ad litem moved for summary judgment contending that the \$7,000 was not property of the bankruptcy estate.²⁰ The trustee then moved to amend his complaint to add a claim for fraudulent transfer under 11 U.S.C. § 548(a)(1)(A) and (B).²¹ After hearing oral argument on the summary judgment motion, the Court allowed the amendment and continued the matter to evidentiary hearing on the trustee's complaint.²² At the time of trial, medical bills of \$6,673.63 for Austin's care and treatment remained unpaid and Mr. Townsley was holding the \$7,000 settlement proceeds in his trust account.

D. ANALYSIS AND CONCLUSIONS OF LAW

At the outset, the Court observes that prompt resolution of this issue has been impeded by several circumstances, some avoidable and some not. When the Trustee discovered the existence of this situation, he did so only as a result of Mr. Townsley's forthright action in contacting him concerning releasing a few hundred dollars of the fund to debtor. No reference to this situation appears in either the statement of financial affairs or the schedules. It seems to the Court that some revelation of the friendly lawsuit should have been made, at least in response to Question 4 in the statement of financial affairs. Such early disclosure might have given the Trustee the leisure to look at this "asset" in a different light. As a legal proposition, Loretta's suit against herself, even though

²⁰ Dkt. 29.

²¹ Although the pleadings reference an alleged transfer of *debtor's cause of action* as the basis for the § 548 claim, by the time of trial the trustee's position had morphed into an assertion that the offending transfer was actually debtor's transfer of the \$7,000 when she endorsed the check to the guardian ad litem. *See* Trustee's Motion to File Amended Complaint, Dkt.36; Trustee's Response to the Summary Judgment Motion, Dkt. 35; and Final Pretrial Conference Order, Dkt. 50.

²² The amendment was incorporated into the parties' final pretrial conference order. *See* Dkt. 50.

brought in a representative capacity, complicates the analysis.²³

The Trustee proceeds on two seemingly alternative theories: (1) that the \$7,000 “medical expense” fund was in fact the property of Loretta in her own right; or (2) that when Loretta endorsed the \$7,000 check to the guardian ad litem, this was a fraudulent transfer made either with intent to hinder or delay creditors or made without receiving reasonably equivalent value in exchange. Either theory proceeds from the starting point that the \$7,000 constitutes property in which Loretta had or could maintain an interest. The Trustee argues that because Loretta was liable for Austin’s medical bills as his parent, the funds paid directly to her for payment of those bills are necessarily her property and therefore property of the estate. Because Loretta endorsed the \$7,000 check over to Mr. Townsley, she transferred the funds to him and, according to the Trustee, this transfer is avoidable under § 548(a)(1).

It is important to clarify what the Trustee does *not* seek. At trial, the Trustee stated affirmatively that he claims no interest in either the PIP reimbursement or the annuity purchased for Austin. And even with respect to the \$7,000, the Trustee argues that the estate’s interest in the funds arises out of Loretta’s supposed personal contractual right to be paid it by the insurance company under her automobile liability policy.²⁴ As he articulated it at trial, the Trustee believes that the PIP reimbursement and the annuity deposit are the proceeds or fruits of Loretta’s negligence and are payable in Austin’s interest on account of Austin’s cause of action against his mother. On the other hand, the \$7,000 is, under the Trustee’s formulation, contractually payable to Loretta as an insured under the policy, either under the Auto Liability Coverage afforded in Part I of the policy or under the

²³ Counsel’s able presentation of the case in motion practice and at trial, along with the testimony of the guardian ad litem and Mr. Kerwick, all greatly contributed to the Court’s grasp of the issues before it today.

²⁴ The Trustee makes this argument notwithstanding the fact that the \$7,000 was clearly paid by Shelter on a cause of action sounding in tort and alleging Loretta’s negligence.

Auto Medical Payments Coverage (known as “excess medical”) afforded in Part II. Mr. Kerwick testified that he, as counsel to the insurance company, could not determine from the documents at hand whether Loretta had received excess medical coverage. Apparently this is optional coverage (as opposed to the statutorily mandated liability coverage in Part I), available at an additional charge, which serves as “excess” coverage providing payment for medical expenses incurred beyond the PIP limits.²⁵ Kerwick’s testimony, along with the this Court’s review of the insurance policy, which lacks a declarations page, leaves considerable doubt as to whether Loretta had the Part II coverage at all. Despite his best efforts, the Trustee did not carry the burden of proving the existence of this coverage and the Court cannot assume it.

In determining whether the trustee’s premise that Loretta had an interest in the \$7,000 fund is valid, we must address the nature of her liability to Austin and manner in which the insurance indemnified her against a finding of such liability. It is axiomatic in Kansas common law that Loretta cannot sue herself and recover from herself or available insurance coverage on account of her own negligence.²⁶ Because Austin is an infant, he cannot proceed in his own behalf and any legal action taken by him must be taken either through one of his parents as a “next friend” or a court-appointed

²⁵ See Plaintiff’s Ex. 9, p. 17.

²⁶ See 59 Am. Jur. 2d Parties, § 4 (One person cannot be both plaintiff and defendant in the same action). See also, *Becker v. Rupp*, 187 Kan. 104, 105, 353 P.2d 961 (1960) (rejecting contention that parents would be allowed to recover for an injury caused by their own negligence where action was brought by mother as next friend of her minor child; any recovery of damages in these circumstances would be a recovery by the minor child, not the parent.); *Nocktonick v. Nocktonick*, 227 Kan. 758, 611 P.2d 135 (1980) (A minor child may sue a parent for personal injuries and recover damages caused by the parent’s negligence in the operation of an automobile; the doctrine of parental immunity is rejected in Kansas); *Stauth v. Brown*, 241 Kan. 1, 11, 734 P.2d 1063 (1987) (A person is not entitled to profit by his own wrongdoing); *Belusso v. Tant*, 258 Ga. App. 453, 574 S.E. 2d 595, 597-98 (2003); *Colonial Ins. Co. of California v. Lundquist*, 539 N.W. 2d 871, 874 (S.D. 1995); *Carbon County School Dist. No. 2 v. Wyoming State Hosp.*, 680 P. 2d 773, 775 (Wyo. 1984) (One cannot sue oneself); *United States v. Interstate Commerce Comm.*, 337 U.S. 426, 69 S.Ct. 1410, 93 L.Ed. 1451 (1949) (Courts do not engage in academic past time of rendering judgment in favor of persons against self; generally, no case or controversy exists for court to adjudicate.).

representative, here a guardian ad litem.²⁷ Thus, to the extent Loretta participated in the state court case as a party plaintiff, she did so in a representative capacity. It cannot be fairly said that she was the real party in interest—Austin was.

To the extent Loretta had liability to Austin as the tortfeasor, she was indemnified by the Shelter automobile liability policy as the named insured.²⁸ The automobile liability insurance policy provides:

PART I – AUTO LIABILITY

COVERAGE A – BODILY INJURY LIABILITY

COVERAGE B – PROPERTY DAMAGE LIABILITY

We will pay on behalf of the **insured** all sums, within the limits of liability of these coverages, which the **insured** shall become legally obligated to pay as damages because of:

(1) **Bodily injury** sustained by any person, and

(2) **Property damage** . . .

We will defend any suit seeking damages which are payable under the terms of this policy, even if any of the claims in the suit are groundless, false or fraudulent.

We may investigate, negotiate or settle any claim or suit.²⁹

* * *

The insurance under COVERAGES A and B applies separately to each **insured** against whom claim is made or suit is brought.³⁰

* * *

PART II – AUTO MEDICAL PAYMENTS

COVERAGE C – MEDICAL PAYMENTS

²⁷ KAN. STAT. ANN. § 60-217(c) (1994). *See also*, Fed. R. Civ. P. 17(c); *Nocktonick, supra* at note 26.

²⁸ *See* Plaintiff's Ex. 9, p.4.

²⁹ Plaintiff's Ex. 9, p. 3.

³⁰ Plaintiff's Ex. 9, p. 4.

We will pay all reasonable medical expenses which are incurred within three years from the date of accident for necessary medical services for **bodily injury** to any **insured** caused by accident. . . ³¹

Under the insurance policy, both Austin *and* Loretta are “insureds.” That term includes the named insured in the missing Declaration and any relatives.³² Relatives are defined as persons who are related to the named insured by blood and reside in the named insured’s household.³³

As described in Part I, the automobile liability Coverages A and B are extended to pay “on behalf” of the insured all the sums the insured shall be *legally obligated to pay*.³⁴ These coverages provide insurance to the insured *against whom claim is made or suit is brought*.³⁵ The coverage also affords the insured a defense and pays the cost of that defense. Shelter is not obligated to pay unless the claim against the insured is settled by agreement of the insured, the claimant, and the company or the claim is reduced to judgment. Mr. Kerwick identified this condition on Shelter’s liability as the so-called “No Action” clause.³⁶ The word “claimant” is not defined within the policy, but it can only reasonably mean the individual or entity asserting a claim against the insured. Here, that claimant is Austin.

Coverage C under Part II, the excess medical coverage, is designed to pay to *any insured* medical expenses incurred within three years of the accident. As noted above, this record does not support a finding that Loretta had opted for excess medical coverage.

³¹ Plaintiff’s Ex. 9, p. 5.

³² See Plaintiff’s Ex. 9, pp. 4 and 15, defining “insured” under Part I (Coverage A) and “eligible insured” under the PIP endorsement respectively.

³³ Plaintiff’s Ex. 9, pp. 3 and 16.

³⁴ Plaintiff’s Ex. 9, p. 3.

³⁵ Plaintiff’s Ex. 9, p. 4, Persons Insured.

³⁶ Plaintiff’s Ex. 9, p. 11, Part VII – Conditions, Action Against the Company.

Therefore, in the absence of excess medical coverage, the Court concludes that the payments made to Loretta as next friend and ultimately to the guardian ad litem were made “on behalf” of Loretta, presumably because, under the settlement agreement, she was *legally obligated to pay* them to Austin or his guardian ad litem as a result of her conduct. Loretta would have been precluded from asserting an action against Shelter to recover any portion of the funds in her own right. The No Action clause in the policy, as well as accepted insurance law makes this plain. Further, nothing in this settlement purports to compensate Loretta for anything other than wages she lost while caring for Austin. Whatever Loretta received of the settlement came as a result of her parental status for the benefit of the claimant, Austin. Had Loretta filed this bankruptcy case before the personal injury case was commenced, the trustee would only have succeeded to whatever rights she had under the policy. As she could not sue herself for her own negligence (under Kansas Law), she could only recover as Austin’s next friend. This entitlement is not a creature of her contractual rights under the policy; rather it is a creature of Austin’s *claim* under it. All she is entitled to under the policy is an indemnity *against* Austin’s claim.

Loretta’s parental right to receive repayment of medical expenses on behalf of her son is to be distinguished from her contractual right to receive a defense of Austin’s claim against her. Only if Shelter had failed to tender that defense would Loretta have had a right to sue her insurer. This Court sees no other basis upon which Loretta, or her bankruptcy estate, could have maintained a contractual claim against Shelter.

The Court is perplexed by the Trustee’s bald assertion that the \$7,000 “contract” right can somehow be segregated from the other damages in this case.³⁷ The Trustee argues that the balance of

³⁷ It is clear that the total settlement amount of \$21,500 was paid as a “complete settlement” of Austin’s claim for damages resulting from the September 21, 2001 accident and of the lawsuit. *See* Plaintiff’s Ex. 2.

the settlement (the PIP reimbursement and the annuity) are directly attributable to Austin's tort claim, but that the \$7,000 is the creature of contract. Even if there were a colorable argument for the medical claim being "contractual," there is no legal authority for splitting the claims between Austin and Loretta. Shelter's duty to pay Austin arose from Loretta's alleged tort. Shelter's duty to indemnify Loretta against her own negligence arises from her contract. Because Austin is not the debtor here, Loretta's estate has no interest in the \$7,000.

To hold that the debtor ever had an interest in this money would imply a holding, contrary to state law, that the debtor could have recovered against her own insurance in her own right as a result of her own negligence. This perverse result would defy public policy, Kansas law, and the No Action clause.

The conclusion that this \$7,000 fund is and always was the property of the Austin is entirely consistent with Judge Ballinger's findings and orders. While much was made of the changes in the state court journal entry and what the motives of the parties and state court may have been, this Court believes nearly all of that evidence to be extraneous to the essential legal issue at hand: whose money was this? That question is answered by the analysis of the state court action and the Shelter policy set out above.

In summary, the \$7,000 was never the property of the debtor and therefore could not have become the property of the estate, even under the expansive reach of § 541. Therefore, it need not be turned over under § 542. Further, because the \$7,000 was never property of the debtor, its transfer (assuming one even occurred) was not the "transfer of an interest of the debtor in property" and therefore cannot be a fraudulent transfer under either § 548 theory.

Judgment should be entered on the Trustee's complaint for the defendant William L. Townsley, as guardian ad litem, and against the Trustee. Acting in his capacity as guardian ad litem

and with the approval of the state court, Mr. Townsley may distribute the \$7,000 on Austin's behalf.

The debtor has no interest in the funds. A Judgment on Decision will issue this day.

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